

Section 305.110 Exceptions and Additions to NESC Provisions

- a) Footnotes and notes which reference provisions of the NESC which have not been expressly adopted by the Illinois Commerce Commission shall not be construed to incorporate such provisions into this Part.
- b) Table A of this Part provides minimum vertical separation between crossarms for the safety of electric and communication employees. Said table will be used in conjunction with Rule 238 in addition to Table 238-1 of the NESC.

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Section 305.120 Intent

- a) Statements in this Part which are to be regarded as mandatory are characterized by the use of the word "shall." Statements in this Part which are advisory in nature, to be followed insofar as practical, are indicated by the word "should." Statements in the NESC which are advisory in nature, to be followed insofar as practical, are indicated as "RECOMMENDATIONS."
- b) Notes contained herein other than footnotes to tables, are for information purposes only and are not to be considered as mandatory or as part of the code requirements.

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Section 305.130 Exemption

If exemption from any of the requirements herein is desired in any particular case, the Commission will consider the application of a public utility for such exemption when accompanied by a full statement setting forth the conditions existing and the reasons why such exemption is desired. Exemptions will be governed by the same standards applicable to waivers and modifications in Section 305.40(a). It is understood that any exemption so granted shall apply only to the particular case covered by the application, and exemption shall not be extended to other cases unless specifically granted in the Commission's order.

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Section 305.TABLE A Vertical Separation of Crossarms Carrying Conductors

1. BASIC SEPARATIONS.

The separations given in the following table are for crossarms carrying conductors of 0 to 50,000 volts attached to fixed supports.

2. INCREASED SEPARATION FOR VOLTAGES EXCEEDING 50,000 VOLTS

For voltages greater than 50,000 volts the clearances in the table below shall be increased at the rate of 0.4 inch per 1,000 volts of the excess.

Supply conductors: preferably at higher levels ⁽⁶⁾					
Conductors usually at lower levels	Open wires, 0 to 750 volts; cables, having effectively grounded continuous metal sheath, or insulated conductors supported on and cabled together with an effectively grounded messenger, all voltages	150 to 8,700 volts	8,700 to 15,000 volts	15,000 to 50,000 volts	
				Same utility	Different utilities
Communication conductors:	Feet	Feet	Feet	Feet	Feet
General	(1)(2) 4	4	6		6
Used in operation of supply lines	2	(3) 2	4	4	6
Supply conductors:		(4) 2	4	4	6
0 to 750 volts	2	(4) 2	4	4	6
750 volts to 8,700 volts					
8,700 volts to 15,000 volts:					
If worked on alive with long-handled tools, and adjacent circuits are neither killed nor covered with shields or protectors.			4	4	6
If not worked on alive except when adjacent circuits (either above or below) are killed or covered by shields or protectors, or by the use of long-handled tools not requiring linesmen to go between live wires.					
Exceeding 15,000 volts, but not exceeding 50,000 volts			2	(5) 4 (5) 4	(5) 6 (5) 4

(1) Where supply circuits of 550 volts or less, with transmitted power of 1,200 watts or less, are run below communication circuits in accordance with Rule 220B2 the clearance may be reduced to 2 feet.

(2) In localities where the practice has been established of placing on jointly used poles, crossarms carrying supply circuits of less than 300 volts to ground and crossarms carrying communication circuits at a vertical separation less than specific in the table, such existing construction may be continued until the said poles are replaced provided that -

The minimum separation between existing crossarms is not less than 2 feet, and that -
Extensions to the existing construction shall conform to the clearance requirements specified in table 11.

When communication conductors are all in cable, a supply crossarm carrying only wires of not more than 300 volts to ground may be placed at not less than 2 feet above the point of attachment of the cable to the pole provided that -

The nearest supply wire on such crossarm shall be at least 30 inches horizontally from the center of the pole, and that -
The cable be placed so as not otherwise to obstruct the climbing space.

(3) This shall be increased to 4 feet when the communication conductors are carried above supply conductors unless the communication-line-conductor size is that required for grade C supply lines.

(4) Where conductors are operated by different utilities, a minimum vertical spacing of 4 feet is recommended.

(5) These values do not apply to adjacent crossarms carrying phases of the same circuit or circuits.

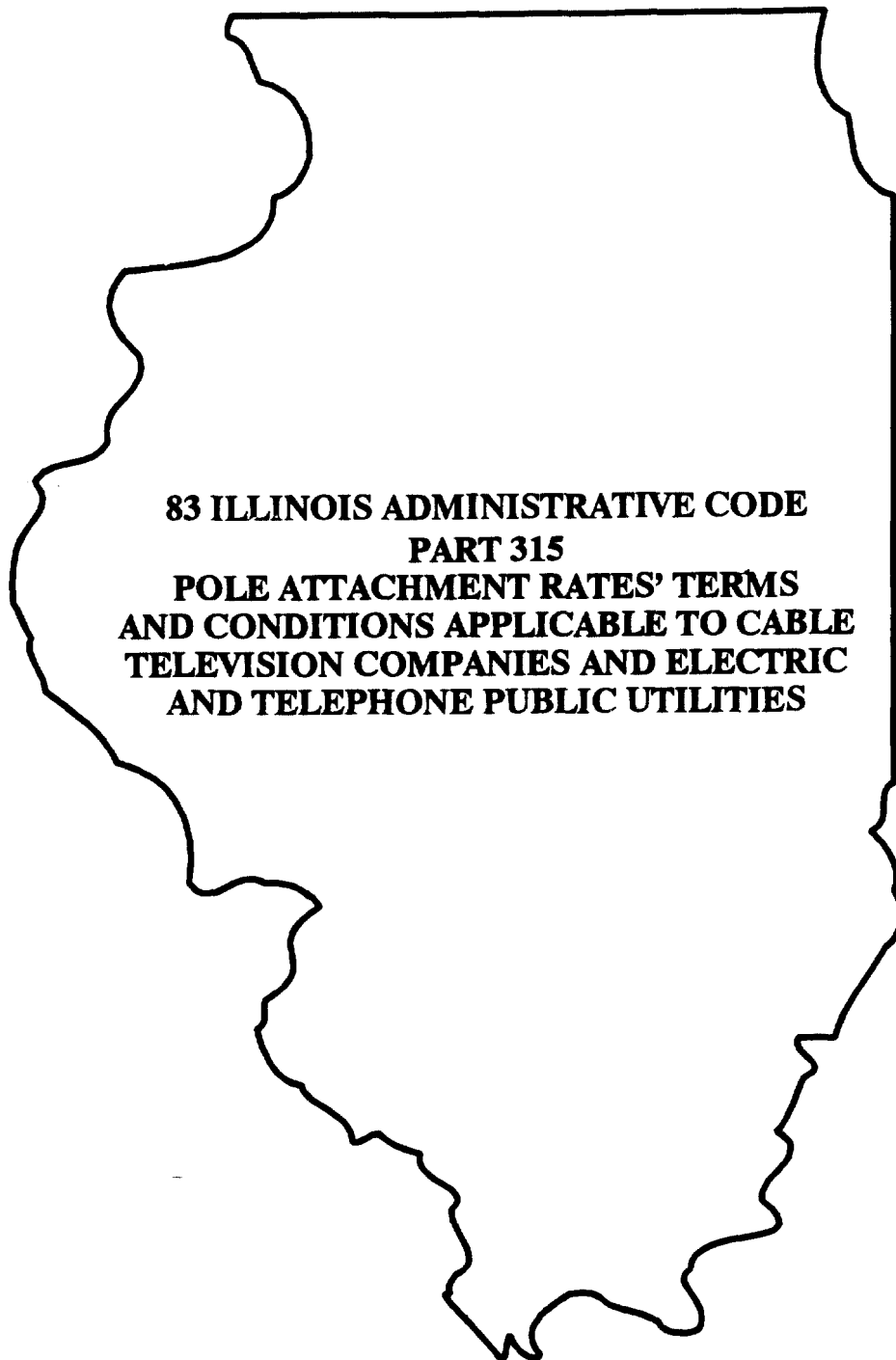
(6) A conductor which is effectively grounded throughout its length, and is associated with a supply circuit of 0 to 22,000 volts may have the clearances specified for cables having effectively grounded continuous metal sheath or messenger.

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**



TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE THAN
ONE KIND OF UTILITY

PART 315
POLE ATTACHMENT RATES, TERMS AND CONDITIONS APPLICABLE TO CABLE
TELEVISION COMPANIES, ELECTRIC UTILITIES
AND TELECOMMUNICATIONS CARRIERS

Section

- 315.10 Statement of Purpose and Commission Policy
- 315.20 Presumptive Pole Attachment Rental Rate Formula
- 315.30 Procedure
- 315.40 Pole Inspections
- 315.50 Make-Ready Work
- 315.60 Indemnification
- 315.70 Prospective Application

AUTHORITY: Implementing Section 7-102 and authorized by Section 10-101 of the Public Utilities Act (Ill. Rev. Stat. 1991, ch. 111 2/3, pars. 7-102 and 10-101)[220 ILCS 5/7-102 and 10-101].

SOURCE: Adopted at 9 Ill. Reg. 2471, effective Feb. 13, 1985;
amended at 18 Ill. Reg. 676 , effective February 1, 1994.

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Section 315.10 Statement of Purpose and Commission Policy

- a) The purpose of this Part is to designate a presumptive methodology for computation of annual rental rates to be paid by cable television ("CATV") companies to electric utilities and local exchange telecommunications carriers (collectively "regulated entities") under the jurisdiction of the Illinois Commerce Commission ("Commission") for the use of space on distribution poles for attachment of CATV cables and associated facilities.
- b) It is the policy of the Commission that CATV companies and regulated entities should, to the maximum extent possible, endeavor to establish pole attachment rental rates through negotiation and without resort to the processes of the Commission. The presumptive pole attachment rental rate formula is designated herein in order to provide guidance to all parties in such negotiations and to set forth the methodology the Commission intends to follow in exercising its authority under Section 7-102 of the Public Utilities Act ("Act") (Ill. Rev. Stat. 1991, ch. 111-2/3, par. 7-102) [220 ILCS 5/7-102] with respect to such controverted cases as are brought before it.

(Source: Amended at 18 Ill. Reg. 676 , effective February 1, 1994)

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Section 315.20 Presumptive Pole Attachment Rental Rate Formula

Subject to the provisions of Section 315.30 below, an annual pole attachment rental rate included in a pole attachment agreement between a CATV company and a regulated entity which is presented to the Commission for consent and approval under Section 7-102 of the Act shall be presumed to be just and reasonable if shown to be equal to the rate resulting from the following formula:

$$\text{Rental Rate} = \frac{(\text{Cost per pole}) \times (\text{CATV Space}) \times (\text{Carrying Charge})}{(\text{Total Usable Space})}$$

Where:

- a) "Cost per Pole" shall be the regulated entity's book investment in all bare distribution poles included in the electric utility Account 364 or telecommunications carrier Account 2411 at the most recent December 31, divided by the equivalent number of distribution poles included in the account at such date. If the book investment for "bare" poles is not ascertainable, then a deduction of 30% shall be made to reflect appurtenances (i.e., crossarms) not used by CATV. This 30% deduction from pole investment may be rebutted by a statistically reliable survey to the contrary.
- b) "CATV Space" shall be 1.0 foot, representing an allocation to the CATV company of 1 foot of the useful space for the CATV attachments.
- c) "Total Usable Space" shall be 14 feet in accordance with surveys sub-mitted by both CATV and the regulated entities. This 14-foot presumption for usable space may be rebutted by a statistically reliable survey to the contrary.
- d) "Carrying Charge" shall include the sum of the following components determined in the following manner:
 - 1) "Maintenance costs carrying charge" shall be the maintenance expense attributed to the maintenance of the poles and associated equipment set forth in the respective electric utility Account 593 or telecommunications carrier Account 6411 as recorded in the books of accounts for the most recently completed calendar year divided by the respective cost of plant recorded in such plant account for the most recently completed calendar year.

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- 2) "Administrative and general costs carrying charge" shall be calculated as the sum of the expenses recorded in the electric utility Accounts 920, 921, 923, 924, 925, 926, 927, 928, 929, 930, 931 and 935 (subtracting the credit in Account 922) or telecommunications carrier Accounts 6110 through 6124, 6510 through 6565, 6610 through 6623 and 6710 through 6790 (excluding depreciation account 6560 through 6566), for the most recent completed calendar year, divided by the investment in electric utility or telecommunications carrier plant in-service (including amounts unclassified and allocated common plant, if any) at the most recently completed calendar year.
- 3) "Depreciation expense carrying charge" shall be the annual depreciation rate applied to electric utility Account 364 or telecommunications carrier Account 2411, expressed as a decimal, for the most recently completed calendar year.
- 4) "Taxes other than income taxes carrying charge" shall be calculated using a methodology which reasonably develops the expense for such taxes for the most recently completed calendar year attributable to the ownership of the facilities recorded in electric utility Account 364 or telecommunications carrier Account 2411, divided by the book cost of such plant. Taxes do not include any estimated or anticipated taxes but only those which have accrued.
- 5) "Return and income taxes carrying charge" shall be determined by the regulated entity by considering the rates of return currently being permitted on depreciated original cost rate bases as allowed by the Commission in the respective utility's most recent rate case. With said rate of return so determined, the return and income tax carrying charge shall be computed as follows:

$$RIT = \frac{r}{1.0 - f - s + fs} \times \frac{DOC}{OC}$$

Where:

- A) "RIT" is the return and income tax carrying charge;

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- B) "r" is the rate of return expressed as a decimal;
- C) "f" is the effective federal income tax rate as incurred by the regulated entity in the most recently completed calendar year expressed as a decimal;
- D) "s" is the effective state income tax rate as incurred by the regulated entity in the most recently completed calendar year, expressed as a decimal;
- E) "DOC" is the depreciated original cost of the pole account as of the end of the most recent calendar year; and
- F) "OC" is the original cost of the pole account, as of the end of the most recent calendar year.

- e) The electric accounts mentioned in this Section are those required to be maintained by 83 Ill. Adm. Code 415. The telecommunications accounts mentioned in this Section are those required to be maintained by 83 Ill. Adm. Code 710.

(Source: Amended at 18 Ill. Reg. 676 , effective February 1, 1994)

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Section 315.30 Procedure

- a) Where consent and approval of the Commission to a pole attachment or conduit agreement is required by Section 7-102 of the Act and the parties thereto have agreed to the annual rate specified in such agreement, the regulated entity's petition for consent to and approval of the agreement shall be accompanied by verified statements of concurrence as to the rate, signed by a representative of each party. Such concurrence will be sufficient proof that the rate provided therein is just and reasonable.
- b) Where consent and approval of the Commission to a pole attachment agreement is required by Section 7-102 of the Act and the parties thereto have not agreed to an annual pole attachment rental rate, the regulated entity's petition for consent to and approval of the agreement shall be accompanied by an exhibit or exhibits showing that the rate proposed by the utility is equal to the rate resulting from the formula set forth in Section 315.20 or if there is a deviation from the formula, a statement explaining any deviations therefrom. No such exhibit need be filed if a concurrence such as that described above is filed. A rate equal to the rate resulting from the formula set forth in Section 315.20 shall be presumed just and reasonable. The burden of proving such a rate unjust or unreasonable shall be on the party objecting to such rate.

(Source: Amended at 18 Ill. Reg. 676 , effective February 1, 1994)

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Section 315.40 Pole Inspections

After the "post-construction" inspection, further inspection of CATV pole plant, at CATV's cost, is prohibited except where the regulated entity submits to the CATV operator a statistically reliable survey evidencing the fact that the CATV operator has failed to report more than 5% of his attachments or is in non-compliance on 5% or more of the poles to which it is attached. The CATV operator shall be allowed 30 days to rebut said survey. If the surveys are in conflict, the Commission shall decide any dispute on petition of either party. Thereafter, if a survey is conducted, the CATV operator shall be required to pay the cost of same if the survey is borne out (more than 5% failure to report rate is shown or more than 5% non-compliance is found), provided that any non-compliance is not caused by the regulated entity.

(Source: Added at 18 Ill. Reg. 676 , effective February 1, 1994)

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Section 315.50 Make-Ready Work

Detailed itemization for make-ready work shall be provided to each CATV operator with each billing for make-ready work. This itemization shall be provided for each pole. At a minimum, this itemization shall include:

- a) dates of work;
- b) location of work;
- c) labor cost per hour and persons employed; and
- d) materials used and cost of materials.

(Source: Added at 18 Ill. Reg. 676 , effective February 1, 1994)

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Section 315.60 Indemnification

CATV operators cannot be required in any pole attachment agreements to indemnify the electric utilities or telecommunications carriers from the negligence of electric utilities or telecommunications carriers.

(Source: Added at 18 Ill. Reg. 676 , effective February 1, 1994)

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Section 315.70 Prospective Application

Contracts concerning the subject matter of this Part approved by the Commission before February 1, 1994 need not be amended to comply with the requirements of this Part.

(Source: Added at 18 Ill. Reg. 676 , effective February 1, 1994)

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ATTACHMENT K

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**83 ILLINOIS ADMINISTRATIVE CODE
PART 780
RIGHT- OF -WAY PRECONDEMNATION REQUIREMENTS
BY TELEPHONE COMPANIES**

**TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER f: TELECOMMUNICATIONS CARRIERS**

**PART 780
RIGHT-OF-WAY PRECONDEMNATION NEGOTIATIONS
BY TELEPHONE COMPANIES**

Section

**780.5 Applicability
780.10 Right-of-Way Precondemnation Requirements
780.20 Precondemnation of Land Right-of-Way Easements
780.30 Compliance with Statute**

**APPENDIX A Company Statement
APPENDIX B Statement of information from the Illinois
 Commerce Commission concerning acquisition
 of right-of-way by Illinois telephone companies.**

**AUTHORITY: Implementing and authorized by Section 4 of "AN ACT
relating to the powers, duties and property of telephone companies"
(Ill. Rev. Stat. 1989, ch. 134, par. 20).**

SOURCE: Adopted at 15 Ill. Reg. 5062 , effective April 1, 1991.

NOTE: Capitalization denotes statutory language.

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Section 780.5 Applicability

- a) This Part shall apply whenever any telephone company seeks to negotiate the acquisition of a land right-of-way easement pursuant to Section 4 of "AN ACT relating to the powers, duties and property of telephone companies" (Ill. Rev. Stat. 1989, ch. 134, par. 20) ("Act").
- b) As used in this Part, "telephone company" shall mean any entity to which the Act is applicable pursuant to Section 1 of that Act, including telecommunications carriers as defined in Section 13-202 of the Universal Telephone Service Protection Law of 1985 (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 13-202).
- c) This Part shall be prospectively applied. This Part shall not affect the following:
 - 1) The validity of any existing certificate issued by the Illinois Commerce Commission ("Commission").
 - 2) The validity of any existing easement.
- d) This Part shall not cause the revocation of any existing Commission certificate.

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Section 780.10 Right-of-Way Precondemnation Requirements

- a) When a telephone company, or its agent, initially contacts any landowner to negotiate the acquisition of a land right-of-way easement, either in person or in writing, the landowner shall be advised in writing that if the landowner has any questions about his rights or the rules of the Commission pertaining to the authority of a telephone company to acquire right-of-way easements, inquiry can be directed to the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62706. The telephone company shall provide the landowner with a copy of Appendix A.
- b) Upon request of the landowner the telephone company shall provide the landowner with the information in Section 780.20(f)(1) and (2) and shall provide the landowner with a copy of Appendix B.

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Section 780.20 Precondemnation of Land Right-of-Way Easements

- a) This Section shall govern the actions of every person acting in behalf of a telephone company when it has been unsuccessful in negotiating a land right-of-way easement, and intends to initiate formal action before the Commission or courts.
- b) At least 14 days prior to a telephone company filing a Petition for an Order under Section 8-503 of The Public Utilities Act (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 8-503) or initiating formal action before a court, as may be applicable, the telephone company representative shall send to the landowner a letter by certified mail, return receipt requested, containing the information set forth below together with a copy of Appendix B.
- c) The representative shall keep and maintain a record, for one year, of letters sent in compliance with this Section.
- d) The letter sent by the representative shall be on that representative's letterhead or on the letterhead of the telephone company and shall set forth:
 - 1) The identity, address and telephone number of the telephone company representative;
 - 2) The identity of the telephone company attempting to acquire the land or land rights;
 - 3) The general purpose of the proposed project;
 - 4) The type of facility to be constructed;
 - 5) The general description of the land or land rights the telephone company seeks to acquire and the type of structures, if any, which the company seeks to build;
 - 6) A statement that the company or its representative continues to seek to negotiate with the landowner to arrive at an agreement for such land or land rights; and
 - 7) An invitation to the landowner to contact the telephone company representative to arrange a mutually agreeable time for an appointment to further discuss the matter.

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- e) Each telephone company representative shall carry with him/her and show to every landowner contacted an identification card showing the name and address of the contacting person and his/her employer. The contacting person shall leave his/her telephone number with the landowner.
- f) At the time of the contact, the telephone company representative shall:
 - 1) Orally state the reason for the contact, i.e., general purpose of the proposed project, type of facilities to be constructed; and
 - 2) Provide written information and data surrounding the proposed project. This shall include, to the extent then known to the telephone company, a statement outlining briefly the purpose of the project, a map or sketches indicating type(s) of facility, approximate location of facilities, compensation and basis for compensation and, if applicable, type of structures, and amount (length and width) of the land right-of-way deemed necessary. This information shall be left with the landowner for review, along with any agreement or contract proposed by the utility.
- g) If the company and the landowner do not reach agreement within two weeks of the mailing of the original letter, the company may then file a Petition for an Order under Section 8-503 of The Public Utilities Act, or may initiate formal action before a court.

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Section 780.30 Compliance with Statute

- a) Pursuant to Section 4 of the Act, a telephone company shall be considered to be in substantial compliance with this Part if the telephone company has supplied the landowner with copies of Appendix A and Appendix B and has supplied, in writing, the information specified in Section 780.20(f)(2) at least 14 days prior to initiating formal action before the Commission or a court.
- b) Section 4 of the Act states that FAILURE TO PROVIDE SUCH NOTICE OR INFORMATION SHALL NOT CONSTITUTE A WAIVER OF THE RIGHTS GRANTED IN THIS SECTION. For purposes of this Part, "such notice" will be construed as the notice required by Section 780.20(b).

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Section 780.APPENDIX A Company Statement

Company Name _____

Company Address _____

Company Contact Name _____

Company Telephone Number _____

As a telephone company responsible for providing telephone service to this area, at times it becomes necessary to place new telephone facilities to serve new customers and improve service to existing customers.

We recognize your rights as a landowner and desire to negotiate with you for an easement to construct these necessary facilities.

Questions pertaining to your rights, as well as our rights to acquire right-of-way easements, may be directed to the Chief Telephone Engineer of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, IL 62706, telephone 217-785-8596.

Please do not hesitate to contact our representative for answers to questions pertaining to this project.

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Section 780.APPENDIX B Statement of information from the Illinois Commerce Commission concerning acquisition of right-of-way by Illinois telephone companies.

The purpose of this Statement is to provide you with the general information concerning the procedures involved. This Statement covers several questions commonly asked of the Illinois Commerce Commission staff by landowners.

This Statement is not a legal opinion concerning your rights under the law or the rules of the Commission, nor is it a detailed analysis of the procedures involved. If you have any questions concerning your legal rights, you may wish to consult an attorney.

Telephone companies and telecommunications carriers are granted the right of eminent domain or condemnation by Illinois law.¹ Eminent domain is simply the power of the State, or those delegated by the State, to take private property for public use upon payment of just compensation as determined by the courts.

Prior to attempting to acquire a right-of-way easement by applying to the courts to exercise the right of eminent domain or condemnation, a telephone company or telecommunications carrier shall attempt to secure the right-of-way easement through negotiations with the landowner.²

Negotiation means discussion and bargaining between the landowner and the telephone company or telecommunications carrier in an effort to arrive at an equitable agreement concerning the land or land rights and the price to be paid for such land or land rights. It does not mean that an agreement must be reached or that either the landowner or the telephone company or telecommunications carrier must agree with the other.

The price to be paid to the landowner by the telephone company or telecommunications carrier for the land or land rights is a matter of negotiation between the landowner and the telephone company or telecommunications carrier. The Commission does not participate in the negotiations, nor does it establish or approve the price. Specific information on the price to be offered for the land or land rights will be provided by the telephone company or telecommunications carrier representative.

The telephone company or telecommunications carrier representative may be negotiating with you for the acquisition of an easement for the use of the land or for the purchase of the land.

¹Ill. Rev. Stat. 1989, ch. 134, par. 17 et seq.

²Ill. Rev. Stat. 1989, ch. 110, pars. 7-101 et seq.

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In either case, the telephone company or telecommunications carrier will have its own form of easement or deed, as the Commission has no standard forms which the utility is required to use.

There is no certainty that the telephone company or telecommunications carrier will be allowed to acquire land or land rights through the use of eminent domain. However, you should not delay in contacting the telephone company or telecommunications carrier's representative to attempt to negotiate fair compensation for the land or land rights which the utility seeks.

If you have any questions about this Statement or the rules and procedures of the Illinois Commerce Commission, please contact the Chief Telephone Engineer, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62706. Any specific questions concerning your individual property should be addressed to the telephone company or telecommunications carrier representative.

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